

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

EMMIS COMMUNICATIONS, INC.,
d/b/a KOIN-TV

Employer

and

Case 36-RC-6310

NATIONAL ASSOCIATION OF
BROADCAST EMPLOYEES &
TECHNICIANS, THE
BROADCASTING & CABLE TELEVISION
WORKERS SECTOR OF THE COMMUNICATIONS
WORKERS OF AMERICA LOCAL 51, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record¹ in this proceeding, the undersigned makes the following findings and conclusions.²

I. SUMMARY

The Employer is engaged in the operation of a television broadcasting station in Portland, Oregon, which is affiliated with the Columbia Broadcasting System (CBS). The Petitioner filed the instant petition seeking to represent the following residual unit of approximately 22 employees: all full time and regular part-time commercial production employees, news producers, assignment desk editors, Chief Photographer, assistant chief photographer, and information technology employees employed by the Employer at its Portland, Oregon place of business; excluding all other employees, including office clericals, professionals, guards and supervisors as defined by the Act.³ The Petitioner also seeks an *Armour-Globe* election to determine whether the residual unit of employees

¹ The Employer and Petitioner timely filed briefs, which were duly considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ The parties stipulated that the systems analyst (one of the two information technology employees) is a confidential employee and, thus, should be excluded from the residual unit. In view of the parties' stipulations in this regard and the record, I shall exclude the systems analyst from the residual unit. The parties also stipulated that the four commercial production employees, the two associate producers, the assistant chief photographer and the webmaster (the remaining information technology employee) are properly included in the petitioner-for unit. Accordingly, I have included those four job classifications in the residual unit described below. See footnote 9 regarding the parties' stipulation to exclude the Chief Photographer position.

seeks to join the existing unit of Employer's employees represented by the Petitioner.⁴ The Employer asserts that the petitioned-for unit is inappropriate because the nine news producers (including the senior producer)⁵ and three assignment desk editors (including the assignment desk manager)⁶ are statutory supervisors within the meaning of Section 2(11) of the Act.⁷ The Petitioner, in response, asserts that the news producers and the assignment desk editors are not statutory supervisors. Based on a careful review of the record and the parties' respective briefs, I find that the Employer has failed to meet its burden demonstrating that the news producers and the assignment desk editors are statutory supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall direct an election in the unit specified below.

Below, I have set forth the record evidence concerning the Employer's operations, the alleged supervisory status of the news producers and the assignment desk editors to assign and responsibly direct, and other record evidence of indicia of that alleged supervisory status. Following the presentation of the evidence, I have set forth a section applying the Board's legal standards to the evidence. The decision concludes with a direction of election and the procedures for requesting review of this decision.

⁴ On June 14, 2005, the Board certified the Petitioner as the exclusive bargaining representative of all fulltime and regular part-time engineering, audio, camera, chyron, technical directors, lighting, master control, photographers, editors, graphic artists, directors, and floor directors employed by the Employer. Additionally, at the time of the hearing, an election was scheduled for July 5, 2005, to determine whether the Employer's on-air employees, including reporters, weather caster/meteorologists and anchors, wished to be represented by the American Federation of Television and Radio Artists (AFTRA). AFTRA was notified of the hearing in this case by letter dated June 15, 2005, but neither intervened nor expressed an interest to represent any of the petitioned-for job classifications.

⁵ The Employer presented evidence that one of the news producers has the title of "senior news producer." The senior news producer, Tracy Langer, did not testify at the hearing. The senior news producer's job description includes supervisory responsibilities such as directly supervising working activities of the news producers, as well as other activities such as hiring, training, assigning and directing work, appraising performance, rewarding and disciplining employees, and resolving conflicts. The senior news producer is not the highest paid news producer. Although the senior news producer's job description would imply supervisory status, there is no additional evidence in the record regarding the senior news producer's job responsibilities and duties as distinguished from the other eight news producers. Accordingly, references to "news producers" or to "producers," generally will include the eight news producers and the senior news producer, unless otherwise noted.

⁶ The Employer presented evidence that one of the assignment desk editor positions belongs to the assignment desk manager. While assignment desk manager Shelly Swanke testified that her duties and responsibilities are very similar to those of the assignment desk editors, I note that the record reveals that Swanke, the senior producer, and others individually serve about every fourth weekend as an "on-call manager." However, neither party provided any details or concrete evidence regarding the nature and extent of the on-call manager's duties nor did the parties take a position on whether on-call managers should be included or excluded from the residual unit or whether their duties and responsibilities should impact my decision in this case. In light of the above and the record as a whole, my decision will not address the on-call manager position. Further, references to the assignment desk editors in this decision will generally include the assignment desk manager position unless otherwise noted.

⁷ At the hearing, the Employer appeared to initially assert that news producers and/or the assignment desk editors were managers and, thus, should be excluded from the petitioned-for residual unit. However, the Employer made no such assertion in its brief. In light of the Employer's brief and the record as a whole, I find insufficient evidence exists to establish that the news producers and assistant news editors are managerial employees who should be excluded from any unit on that basis. Moreover, the Employer also indicated at the hearing that it had some reservations regarding the appropriateness of the residual unit -- again, those reservations did not materialize in any fashion in the Employer's brief. Thus, I further find based on the parties' stipulations, the record evidence and the parties' respective briefs, that the residual unit sought by Petitioner is appropriate.

II. RECORD EVIDENCE

A. The Employer's Operations

The Employer operates a television broadcasting station in Portland, Oregon, which is affiliated with CBS. The Employer's operations consist of, among other things, providing daily local news coverage and commercial advertising. The Employer has five regular news broadcasts during the weekdays from 5:00 AM to 7:00 AM, 12:00 PM to 12:30 PM, 5:00 to 5:30 PM, 6:00 to 7:00 PM and 11:00 to 11:35 PM. The Employer also has three news broadcasts on Saturday and Sunday at 5:00 to 5:30 PM, 6:00 to 7:00 PM and 11:00 to 11:00 PM. There are no morning and noon news broadcasts on the weekends. The Employer's news broadcast focuses primarily on local news stories but the Employer also purchases and customizes national and international stories to be aired during its regular news broadcasts. The record discloses that the Employer's reporting and photography staff focus primarily, if not exclusively, on local news stories.

The Employer's Acting General Manager, Kim Montour, is the highest management official in the Portland station. Montour is in charge of overseeing the Employer's operations, including the news department. Within the news department, the Employer's managers or supervisors consist of the Station manager,⁸ the Assistant News Director, the Executive Producer, the Managing Editor, the News Operations Manager, and the Chief Photographer.⁹ The record reveals that the Employer's Station Manager and Assistant News Director positions became vacant in May 2005, shortly before the hearing in this case. The Employer is in the process of considering the filling of these vacant positions, which have been in existence since at least January 1996.

Organizationally, the news department structure is set forth in Employer Exhibit 1. In addition, record testimony reveals that the Station Manager and Assistant News Director normally manage/supervise various aspects of the news department. During the brief period (about a month) when the Station Manager and Assistant News Director positions have been unfilled, Employer Exhibit 1 and testimony reveal that the news department falls under the primary management/supervision of the News Operation Manager, Executive Producer and Managing Editor. According to Employer Exhibit 1, below the News Operation Manager is the Chief Photographer/assistant chief photographer and chief editors, with the latter two respectively above the photographers and editors. Below the Executive Producer are the nine producers and two associate producers/writers. Below the Managing Editor are the three assignment desk editors. It appears from Employer Exhibit 1 that the news reporters report directly to Acting General Manager, Kim Montour. In sum, it does not appear that anyone reports directly to the assignment desk editors and that the three associate producers/writers report to the nine producers.

Prior to the departure of the Station Manager and Assistant News Director in May 2005, the news department managers would meet weekly at 10:00 AM on Tuesdays to discuss personnel issues, special stories, ratings, scheduling and other topics related to managing the news broadcast. However, there have been no weekly management meetings in the news department since the May 2005 departures of the Station Manager and the Assistant News Director.¹⁰ Regardless, the news

⁸ There was conflicting evidence regarding the correct title of this position. According to News Operations Manager Rick Brown, the title for the position changed from News Director to Station Manager when the former Station Manager took over the position.

⁹ The parties stipulated that these positions are supervisors within the meaning of Section 2(11) of the Act and that they have the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, discipline, responsibly direct, adjust grievances, or to effectively recommend such action. Accordingly, I shall exclude the Station Manager, Assistant News Director, Executive Producer, Managing Editor, News Operations Manager, and the Chief Photographer from the residual Unit described below.

¹⁰ In addition to the managerial meetings, the Employer has leadership team meetings, which meet on Thursdays at 10:00 AM. The meetings, which are open to all station employees, concern general operations

producers and the assignment desk editors have not attended these weekly management meetings at any time relevant herein.

According to the record evidence,¹¹ the Station Manager has overall responsibility for supervising and directing the production of news, including reviewing and signing off on all personnel decisions, attending the morning and afternoon editorial meetings, and conducting the weekly management meeting. The Assistant News Director has primary responsibility for supervising the reporting staff and co-supervising the producers with the Executive Producer. The Assistant News Director is also responsible for assisting in morning and afternoon meetings, approving reporter scripts and hiring and interviewing newsroom personnel. While the Station Manager and the Assistant News Director positions remain vacant, the remaining managers have assumed the responsibilities of these two positions. For example, the Executive Producer is currently the manager primarily responsible for reviewing the reporters' scripts. The Executive Producer attends the morning editorial meeting in the Assistant News Director's absence.¹² Additionally, the Executive Producer and the Managing Editor are currently responsible for overseeing the reporting staff.

Normally, the Executive Producer is generally responsible for the news producers, including approving the news producer's scripts; coordinating assignments during breaking news and special news events; reviewing the daily graphics; and scheduling, reviewing and directing the news producers. The Executive Producer is normally at the station between 12 noon and 10 PM but since the departure of the Station Manager and Assistant News Director, the Executive Producer has been coming in earlier to work and leaving at about 7 PM for the purpose of, among other things, covering the early morning editorial meeting described more fully below. However, before leaving work, the Executive Producer meets with the 11 PM news producer to review her production and "rundown" for the late night news.

The Managing Editor is responsible for the assignment desk editors, including directing breaking news coverage, directing the morning and afternoon editorial meetings, coordinating special events coverage, and scheduling, reviewing and directing the assignment desk staff. The Managing Editor's work hours are from 8:30 AM to 7:15 PM and he is also in contact with reporters and photographers with regard to the "logistics" of their work.

The News Operations Manager is responsible for coordinating the editors and photographers, scheduling and reviewing the photographers, representing the news department on issues needing the engineering department, coordinating equipment and field logistics during special news events, and coordinating live shots.¹³

With respect to the Chief Photographer, the record reveals that position is filled by Bill Cortez, who along with News Operations Manager Rick Brown, supervises the photographers. Indeed, Cortez is directly responsible for the hiring process and evaluations involving photographer positions (including video "cameramen") and he is responsible for training, assigning and directing

matters such as sales, new equipment, and departmental updates. There are no personnel or confidential issues discussed during the leadership team meetings.

¹¹ The record does not contain the job descriptions for many of the management positions. However, the record includes several solicitations for the management positions and an e-mail dated October 4, 2004, which includes an outline of the general job duties and responsibilities of the management staff. The News Operations Manager testified that with the addition of some minor changes and the delegation of the Station Manager's and Assistant News Director's responsibilities, the duties and the responsibilities of each of the managers remain the same.

¹² It is unclear whether the Executive Producer would normally be at the morning editorial meeting. According to the documentary evidence the Executive Producer's normal hours are from 12:00 PM to 10:00 PM. These hours appear to have changed after the Assistant News Director left.

¹³ The Acting General Manager, Executive Producer and Managing Editor did not provide testimony during the hearing. The Employer's only managerial witness was the News Operations Manager.

the photographers in their work. Cortez and Brown discuss which photographer is best for a shoot and Cortez actively insures that photographers have the correct equipment to perform their jobs.

The Employer has several categories of employees who are currently represented by Petitioner, including the news directors, the graphic artists, the engineers, master control, photographers, and editors. Additionally, the parties stipulated on the record that the Employer's webmasters, commercial producers, associate producers and assistant chief photographer were appropriately included in the petitioned-for residual unit. The remaining petitioned-for job classifications are the disputed news producers and the assignment desk editors.

With respect to the news producer, each is generally responsible for one news broadcast. For example, News Producer Tia York is responsible for the weekly news broadcast at 11:00 PM and News Producer Autumn Foster is responsible for the 6:00 PM news broadcast. In this regard, the news producers are responsible for selecting and creating news content, creating the show rundown, which is a "blue print" detailing length and order of the news reported during the news broadcast, writing scripts for shows and ordering the creation of graphics for the show. The news producer also sits in the control room during the actual news broadcast.

As for the assignment desk editors, they are responsible for coordinating the tracking, assignment, and coverage of news events for the news department. In this regard, the assignment desk editors gather information from a variety of sources for story ideas, monitor breaking news to determine coverage, dispatch news crews, monitor news crews activities, maintain daily and future assignment files, assign equipment to crews, and generally assist reporters and photographers in the creation of news stories.

B. News Producers' Supervisory Status

1. Assignment and Direction

The Employer asserts that the news producers assign and responsibly direct reporters, photographers and other employees during their daily routine. Specifically, the Employer asserts that the news producers assign and direct employees during the morning and night editorial meetings; assign and direct the anchors, reporters, photographers and other employees when creating the news broadcasts' rundown; assign and direct graphic artists and associate producers to respectively create graphics and scripts; and assign and direct reporters whose stories fail to pan out or when there is breaking news. The record evidence with regard to each of these instances is described more fully below.¹⁴

a) Morning and Night Editorial Meetings

The Employer's operations essentially begin with the morning editorial meeting at 9:00 AM. There is a similar night editorial meeting at 2:30 PM. The editorial meeting lasts for approximately 30 to 40 minutes and is attended by reporters, photographers, news producers, assignment desk editors, the Executive Producer, the News Operations Manager, and any other managers who wish to attend.¹⁵ The editorial meetings are typically led or facilitated by the Managing Editor. News

¹⁴ In addition to the above, the Employer presented evidence regarding the "postmortem." The postmortem is a meeting at the end of each news broadcast, with the exception of the 11:00 PM news broadcast because there are no managers present at that time. The meeting is run by the news producer and attended by the News Operations Manager, the director, the Production Manager, and any other personnel who wish to attend. The purpose of the postmortem is to discuss what went well and what went wrong with the show. The news producer may identify things that went well or went wrong, but there is no evidence that after these meetings the news producers conduct follow-up, of any kind, with any employees or that the news producers recommend rewards or discipline in this regard.

¹⁵ News Operations Manager Rick Brown testified that the acting general manager attends the morning meeting approximately once a week and the former Station Manager attended approximately three times each week. Christine Miles testified that she has never attended a morning meeting where one of the managers (i.e.

Operations Manager Rick Brown testified that the Managing Editor keeps the meeting moving so that everyone does not try to run the meeting. Also reporter Christine Miles testified that the Managing Editor brings an assignment sheet to the meeting, which is a list of potential stories created by the assignment desk editors. The purpose of the morning and night editorial meetings is to decide on the stories the Employer is going to present during its news broadcasts and to assign the stories to the reporters and photographers.

With regard to selecting and assigning news stories, there are between approximately ten to twelve local news stories selected during the morning editorial meeting and approximately three to four local news stories selected during the night editorial meeting.¹⁶ All of the attendees at the editorial meetings contribute ideas for stories. The decisions regarding story selection are made through a collaborative process. Reporter Christine Miles testified that sometimes she generates her own stories and sometimes stories are assigned to her. Miles testified that she tries to obtain the support of other attendees in the meeting, including news producers, because she would have a greater chance of having her story selected. Miles testified that when there is a disagreement, the Executive Producer and Managing Editor have the final decision making authority. Miles further testified that the Executive Producer sometimes will agree with the news producer and sometimes will not agree with the news producer. However, Rick Brown testified that while there is a great deal of collaboration, there is no ultimate decision making authority. Brown testified that the producers have a lot of input in the decision making process. Brown further testified that he had seen disagreements but not to the point where someone had to make a decision. News producer Tia York testified that if there is a disagreement between the news producer and the Executive Producer about what story to run, the Executive Producer will typically defer to the news producer. However, York further testified that the Executive Producer could overrule the news producer but has not done so.

With regard to assigning the reporters, New Operation Manager Brown testified that the reporters' assignments are made through a collaborative process similar to selecting stories. Brown testified that the news producers' input is given deference regarding which reporters are assigned to stories; however, Brown did not testify that news producers are the ultimate decision making authority with respect to reporter assignments or that their recommendations are effectively followed. Indeed, the record reveals that reporters often successfully pitch their own reporting assignments at these meetings. Brown testified regarding an incident in which a news producer opposed the assignment of a reporter because the news producer felt that the reporter was not qualified because of the nature of the story (a murder-suicide). Brown testified that the reporter was taken off the story but did not provide details regarding whether the purported unqualified reporter was permitted to respond to the news producer's opposition, regarding who ultimately made the decision to remove the reporter from the story, or regarding whether others had input in the decision. Regardless, reporter Christine Miles testified that her assignments are made by a collaborative process, but ultimately the Executive Producer and Managing Editor possess final decision making authority as to story assignments. News producer Tia York testified that she helps make story assignments to reporters, but did not clarify what she meant by "helps." However, York further testified that assignments are generally made based on whether a particular reporter pitched the story and/or a reporter's availability.

the Station Manager, the Assistant News Director, the Managing Editor, the Executive Producer, the News Operations Manager, or Chief Photographer) was not present.

¹⁶ In addition to the regular local news stories, the Employer also airs "special news stories." The record is unclear on what makes a news story a special news story or how a story is designated a "special news story."

b) Show Rundown

Following the editorial meetings, new producers are responsible for creating a “rundown,” which essentially is a blueprint for the news broadcast to which they are individually assigned. The rundown includes the order of the stories, the exact time the story is scheduled to begin, the length of the stories, who wrote the story and any graphics or maps the story includes.¹⁷ The news producers are also responsible for deciding on the order of the stories and the length of the stories during the news broadcast. However, the lead story is chosen during the editorial meeting conducted before the news broadcast. Additionally, although it varies from show to show, generally, there are established time allotments for each story, established start times for certain news segments and established start times for commercial breaks. Reporter Christine Miles testified that the Employer’s standard time allotments for a reporter’s news story package, which is one minute twenty seconds, had been established by the Assistant News Director.

News producer Tia York testified that she uses a template to create her rundown that includes certain standardized portions. For example, York testified that the weather is between 11:18 PM and 11:20:30 PM, the first commercial is between 11:10:30 PM and 11:12 PM, and the sports’ report is usually two minutes and fifteen seconds and begins at 11:29 PM. News producer Autumn Foster similarly testified that she plugs information into a template for a rundown and that the rundown follows a standardized format. Foster also testified that different types of stories have different lengths. For example, a voice over is typically twenty to thirty seconds, a package (which is a reporter’s complete story with video and interviews) is approximately one minute and twenty seconds, and sound on tape (which is similar to a voice over) is forty-five seconds. Anchorman Mark Rochetti testified that while the news producers determine the order of the overall news broadcast, the weather and sports anchors will decide how to present the news in his or her segment. Rochetti also testified that he does his weather report during the morning show at specific times, but that the length of the weather report changes, in contrast to the evening shows, which are more regimented.

After the rundown is complete, the producer will briefly review the rundown with the Executive Producer. News producer Tia York testified that the Executive Producer has only made changes to her rundown two or three times in the past thirteen months. York also testified that if there are changes after the Executive Producer leaves for the day at either 7:00 PM or 10:00 PM, she makes changes to the rundown on her own. Also prior to the show, the news producers communicate with the reporters in the field, informing them about the amount of time their story has been slated for and discussing the format of their stories. If a reporter’s story is running too long, the news producers may direct a reporter to shorten his or her story or may assist them in cutting the story down. News producer Tia York testified that the ultimate decision regarding the length of the story is the news producer’s. However, reporter Christine Miles testified that if she is concerned about the length of her story, she will go to the news producer and ask for more time, and if news producer denied her request, she would go the Executive Producer to ask for more time. News producer Autumn Foster testified that she tries to be flexible when it comes to changing the time for a story but that she has denied reporters’ requests for extra time and has told reporters to shorten or lengthen their story.

News Operations Manager Rick Brown testified that in addition to the order and the length of the show, the news producers decide on where the anchors sit during the broadcast, what graphics to include in the broadcast, whether the anchors stand in front of the chromo wall (used for

¹⁷ Graphic artists perform the graphics work set forth in the news producer’s rundown. The graphic artists are employed in the Employer’s graphics department within the production department, which is on separate floor from the news producers. Moreover, the graphics department is directly supervised by the graphic artist director. The rundown essentially constitutes an order for work to be performed by the graphics department.

projecting images behind the anchor typically in the weather forecast). Brown also testified that if something goes wrong during the broadcast, it is ultimately the news producer's responsibility. News producer Tia York testified that if something goes wrong during the news broadcast, she will make a decision regarding what to do and give direction over the ear piece or interrupted feedback (IFB) to the director and the anchors. Anchorman Mark Rochetti testified that during the morning show, the producer gives the anchors instructions over their ear piece or IFB regarding whether they should wrap it up, when they should return to their seat, and/or any changes to the story length. Rochetti testified that because of the nature of the morning show, which is somewhat free flowing, the time allotments change regularly at the news producer's discretion. Rochetti also testified that the show is the news producer's responsibility and if the news producers leave an important story out of the news broadcast, they will be held accountable. Neither Rochetti nor Brown testified regarding how the producer will be held accountable. Moreover, there is no record evidence (e.g., discipline and/or evaluations documentation) to establish whether the news producers are held accountable for other employees who fail/refuse to properly execute what is otherwise a proper rundown or whether the news producers are only held accountable for their actual work product.

News producers Tia York and Autumn Foster testified that once the news broadcast begins, the newscast director actually takes over the production and airing of the show. The newscast director is in charge of the news broadcast, and has the primary responsibility for implementing the news producer's rundown. According to the news directors' job posting, they are responsible for working closely with the news producer and must provide creative, aesthetic, and technical expertise to the news show production. News Operations Manager Rick Brown testified that it is the responsibility of the news director to direct the technical aspects of the news broadcast, including setting up the camera shots, bringing up the cameras in the proper order and ensuring that the audio plays when it is scheduled to play. Additionally, several witnesses testified that the news broadcasts follow the particular routine format laid out in the rundown, particularly the evening news broadcasts. Anchorman Rochetti testified that while news producers make requests of him before or during the news broadcast, he may also make requests of the news producer. For example, Rochetti testified that he could ask for two camera shots of the outside weather before going to the weather map, or Rochetti may ask the news producer to check on a fact within a story.

On the surface, it would appear that the weekend producers have greater creative leeway with regard to the content of the weekend news broadcasts because the Executive Producer and Managing Editor are not generally present in the station on the weekends. Employer testimony reveals that the weekend producers and the assignment desk editors are directly responsible for assigning stories and making decisions regarding the reporters and photographer's stories. However, the crew of reporters and photographers is significantly more skeletal during the weekend.¹⁸ Moreover, reporter Christine Miles testified that the weekend reporters, prior to each weekend, have a general idea of their respective weekend reporting assignments. In addition, an editorial meeting concerning weekend news broadcasts is conducted each Friday. The record reveals that weekend newscasts are subject to greater pre-planning than the weekday newscasts. The record also reveals that the Employer has a manager on call during the weekends, who is responsible for calling at 9:00 AM and identifying two lead stories, calling at 12:00 PM and discussing how the stories are developing, calling at 2:00 PM for a story update and to review the rundowns for both producers, calling again at 4:00 PM to discuss the 11:00 PM stories and finally calling at 7:00 PM for the 11:00 PM story update. Additionally, during the weekends, the Managing Editor and Executive Producer have Employer issued cell phones and are available if needed, and the Operations News Manager would also be available to respond to requests for use of the helicopter to cover news events.

¹⁸ The record reveals that, during the weekend, two to three reporters and two to three photographers work the day shift, and two reporters and two photographers work the night shift.

c) Creating Scripts and Graphics

The Employer's reporters and the photographers are responsible for writing the scripts for their stories and choosing the graphics. However, this is only a small portion of the stories that go into the news broadcast. The remaining stories are chosen by the news producer. For example, news producer Tia York, the producer for the 11:00 PM news broadcast, testified that she must select approximately twenty stories in addition to the three to five stories which are selected during the night meeting. York testified that she obtains the twenty other news stories from prior stories the Employer has covered that day, the local and national associated press wire, the internet, newspapers, radio, CNN, CBS and from satellite feed.

With regard to these twenty other news stories, the news producer is responsible for writing the story script that will be read by the anchors, obtaining the graphics and placing stories and graphics in his or her rundown. York testified that she will write the stories or rewrite the stories from the prior news broadcasts, or assign a writer to write the stories. York testified that there are three writers to whom she will assign writing and those writers are associate producer Kirsten Richards, news producer Gene Galante and news producer Gene Greer.¹⁹ York testified that she does a great deal of the writing herself but relies on the writers for assistance in this regard. The record does not reveal how much writing is actually performed by the news producer, responsible for producing the newscast, and how much writing is performed by others. York further testified that she will occasionally request that reporters rewrite their stories for the 11:00 PM news broadcast. York did not provide any evidence detailing what would occur should a reporter refuse to rewrite his or her story. There is no evidence in the record that the news producers assigned anchors to write or rewrite stories, but anchors, on their own initiative, have rewritten producer's stories to fit the anchors' respective styles of delivering the news.

News producer Autumn Foster similarly testified that she tries to do the writing herself but will assign the stories to Richards, Galante, Greer, as well as to news producers Marcia Chaney, Brad Belstock, Carol Koon and others, when necessary. Anchorman Mark Rochetti testified that he will change the language in a particular story, but if the changes are significant he would inform the producer of his changes. When the scripts are complete, York reviews the scripts before the news broadcast. However, News Operations Manager Rick Brown and producer Autumn Foster testified that the Executive Producer also reviews the scripts before the news broadcast airs.

With regard to the graphics, news producer Autumn Foster testified that there are standard graphics for the news broadcast and those standards are over the shoulder, full screen, and panel. Foster testified that she creates a list of the graphics she wants to include with her stories and she submits the list to the graphics department and they create the graphics. Foster testified that it takes her about 20 minutes to put together her list of graphics. Foster further testified that occasionally she will request a special graphic from the graphics department for a special story.

News producer Tia York testified regarding the instructions she will give to the graphics artist. For example, in the case of a dog mauling, she testified that she would write on the graphics list "OS" for over the shoulder, and place the words "dog mauling" in quotes so the graphics artist will place that text in the graphic and then she will write "pit bull/little boy" to designate the images she wants to include. York testified that there are approximately ten to fifteen elements on her graphics list. York testified that the graphic artist director oversees the style of the graphics but that York has

¹⁹ However, the record reveals conflicting evidence regarding the associate news producers' scheduling. While York's testimony is noted above, at another point in the record it is revealed that associate producer Richards only works weekends while York works during the week. In particular, the record reveals that one associate producer works only on the weekends from 7 AM to 10 PM and another associate producer works from 1 AM to 9 AM during the week. Additionally, for the morning newscast, the producer writes about 70 to 75 percent of the scripts while the associate producer writes the remaining portion of the scripts. Greer is one of two "floating" producers. The precise schedules of these floaters are not clear in the record.

final approval for the graphics that actually appear in the show. If for instance York does not like a particular graphic, she may order another from the graphics department.

d) Story Failing to Pan Out

News Operations Manager Rick Brown testified that if a reporter's story failed to pan out, the reporter and/or the photographer would contact the assignment desk editor, the news producer or the Managing Editor. The Managing Editor and the news producer would then decide how to proceed. Brown testified that the Executive Producer would also collaborate in determining how to replace the missing story. In a similar regard, Brown testified that if a new story replaced an existing story, the Executive Producer would have the ultimate authority to approve the change. Brown testified, however, that the Executive Producer would only make the change after taking into account the views of the news producers. Brown testified that he had not seen the Executive Producer or Managing Editor overrule a news producer but imagined that it could happen. Neither Brown nor any other witness testified about a specific incident of a story failing to pan out, being dropped and/or replaced by another story.

Reporter Christine Miles testified that she often contacts the station when she needs assistance or if the story on which she is reporting is failing to pan out. Miles further testified that when her story does not pan out, she calls the news producer and the Executive Producer. Miles testified that her call to the news producer is a matter of a courtesy as producers are responsible for piecing together the content of the actual news broadcasts. Miles further testified that if her story fails, she will obtain a new story from the Executive Producer or the Managing Editor.

Assignment desk manager Shelly Swanke testified that reporters generally end up doing a story, even if their initial story does not pan out, unless their story completely falls through at the end of the broadcast day. News producer Tia York testified that if a reporter's story fails to pan out at the end of the day when the managers have left, she will discuss the situation with her assignment desk editor, Shelly Swanke, and they will make a decision regarding how to proceed. York testified that Swanke will call the reporter to relay the back up plan.

News producer Autumn Foster testified regarding a reporter's story, which had problems panning out because the reporter had been unable to secure interviewees. Foster testified that she spoke with the Executive Producer and they suggested to the reporter that he or she go to a local Starbucks to obtain interviewees. According to Foster, the reporter chose not to follow their advice. Foster did not testify regarding whether there were consequences for the reporter failing to follow the news producer and/or the Executive Producer's suggestion. Foster further testified that if the reporter is having a problem with a story, the reporter will let the Managing Editor and Executive Producer know and those two managers will make the decision whether to cancel the story.

e) Breaking News

News Operations Manager Rick Brown testified that when there is breaking news, the news is given to the news producer, either before or during the news broadcast. Brown testified that the news producer decides where they want to put the breaking news, how they want to present that news and whether they need a graphic. During the news broadcast, the news producer tells the anchor what the breaking news is and how to present it through the earpiece or IFB. The news producer can break-in during the news broadcast and can decide when the news goes on. The news producer also has the authority to drop stories during the news broadcast. There is no evidence that the news producer has the authority to drop a commercial. However, news producer Autumn Foster testified that when the news broadcast has begun, the Executive Producer will instant message to Foster any breaking news and instruct her to put the news on the air.²⁰ Foster

²⁰ In sum, it appears that the Executive Producer monitors, in some fashion, breaking news during news broadcasts, maintains contact with producers during the actual news broadcasts, and issues directions to the producer with regard to the breaking news.

testified that she will relay the breaking news to the anchors and when to put it on the air. Foster testified that she will also relay breaking news to the anchor on his or her break, rather than interrupting the broadcast.

C. Assignment Desk Editors Supervisory Status

1. Assign and Direct

The Employer asserts that the assignment desk editors assign photographers to the reporters after the morning and night meetings based on the photographers' skills and asserts that the assignment desk editors assign and direct crews of reporters and photographers while they are out in the field with regard to story creation and equipment. The Employer further asserts that the assignment desk editors possess supervisory authority because of their ability to assign the helicopter, stringers (freelance photographers), and the satellite trucks.

a) Assigning Photographers

News Operations Manager Brown testified that the assignment desk editor generally assigns the photographers based on the photographers' skills, the nature of the story and whether the photographer works well with a particular reporter. About seven to eight photographers work the day shift while three photographers typically work during the night shift. Brown testified that if they do not have enough photographers, the assignment desk editors will prioritize the photographer assignments and try to cover all the stories. However, assignment desk manager Shelly Swanke, who works the night shift, testified that approximately 60% of the time photographers are simply assigned on the basis of when they report into work.²¹ Swanke further testified that the remaining 40% of the time she tries to make assignments based on a photographer's strengths and whether they get along with the reporter or are a good partner with the reporter.²²

Reporter Christine Miles also testified that the assignment desk editors are similar to dispatchers. Miles testified that the assignment desk editors are usually pretty good at assigning the photographer the reporter requests and if that photographer is out, the reporter will typically be assigned the next photographer on the list. Miles testified that the assignment desk editors commonly assign the photographer that happens to be present when the assignment is made. Miles further testified that if she did not want to work with a particular photographer she would make that known to the assignment desk editor.

b) Assigning and Directing Crews in the Field

News Operations Manager Rick Brown testified that during the day, the assignment desk editors stay in contact with the reporters and photographers to ask them questions about the story and if everything is going as planned. Brown testified that the assignment desk editors will direct crews from one location to another if needed. For example, if a fire started at another location, the assignment desk editor would direct an available crew to that fire. Brown testified that the assignment desk editors will not instruct photographers how to complete their jobs (i.e. how to film), but will sometimes tell reporters the types of questions they need to ask a particular interviewee.

Reporter Christine Miles testified that photographers and reporters will also contact the assignment desk to ask for information or a particular piece of equipment. Miles further testified that she will contact the assignment desk between zero to four times a day to request that the

²¹ As mentioned above, the photographers are directly supervised by Chief Photographer Bill Cortez and News Operations Manager Rick Brown. Brown is directly responsible for scheduling the photographers.

²² The compatibility of photographers and reporters does not appear from the record to be a complicated process and it appears to be common knowledge among those concerned. Also, with regard to the night shift, because 60 percent of the night shift constitutes two out of the three night shift photographers, it would not appear that Swanke has any significant leeway in assigning photographers during her night shift based on who gets along with whom.

assignment desk perform some function or task that will assist Miles' reporting of a particular news event. For example, a reporter could request the assignment desk to dig up some information related to an upcoming interview by the reporter, such as directions, contact information, and biographical information.

c) Authority to Use Helicopter, Stringer or Other Equipment

News Operations Manager Rick Brown testified that the assignment desk editor has the authority to use the helicopter, the satellite or microwave truck and has the authority to hire a stringer if a crew is unavailable.²³ Brown could not recall an instance where the assignment desk editor sent out a helicopter without prior approval but could recall an instance where the assignment desk editor called up a stringer without prior approval. However, on April 1, 2004, the then general manager issued an e-mail message requiring prior written or verbal approval by the Station Manager before buying or hiring a stringer to shoot something. The e-mail includes the former Station Manager's cell phone number so that he could be reached in off-hours with regard to the use of stringers. Moreover, the assignment desk does not have the authority to negotiate at all with the stringer regarding the fees for the stringer's services.

Assignment desk manager Shelly Swanke testified that she typically obtains prior approval before using the helicopter. Swanke further testified regarding one occasion when she essentially turned and said to the Managing Editor, who was standing nearby Swanke at the station, that a news event required the use of a helicopter. The Managing Editor apparently agreed with Swanke and the helicopter was subsequently dispatched to cover the story. Swanke testified that she does not need to obtain prior approval before using the satellite truck or hiring a stringer.²⁴ Reporter Christine Miles testified that she will request a satellite truck or microwave truck of an assignment desk editor. However, some of her requests have been denied not by the desk, but by upper management. Miles further testified that the assignment desk must have prior approval from one of the managers before using the helicopter. Although the record is unclear, it appears that there are certain circumstances (such as the eruption of Mr. St. Helens, a wildfire, etc...) when the use of the helicopter is the only viable means of capturing the necessary video footage and, thus, the need for its use is readily apparent. However, the record demonstrates that in all other circumstances, prior approval is required in order to dispatch the helicopter to cover a news event.

D. Other Indicia of Supervisory Status²⁵

The Employer also asserts that the assignment desk editors participate in hiring, training, evaluating and disciplining personnel. However, the Employer did not flesh out the record in this regard. In particular, assignment desk manager Shelly Swanke testified that she sat on a hiring committee of four individuals several years ago but she did not have the authority to hire employees and her recommendations were not always followed. There is no evidence that Swanke's past hiring committee involvement are currently part of her normal responsibilities. Indeed, Business Manager Teresa Stedman testified that the hiring decisions were actually made by the acting general manager.

The photographers and reporters have established working hours. The news producers and the assignment desk editors have no responsibility for scheduling or reviewing the timesheets for any employees. The schedules for the reporters are created by the business manager and the

²³ Stringers are not regular employees of the Employer. Rather, it appears that they are independent contractors.

²⁴ While not abundantly clear, it would appear that one of the few factors considered in dispatching a satellite truck is whether an individual is available to operate that truck.

²⁵ During the hearing, both parties presented evidence concerning a number of the primary and secondary indicia of supervisory authority allegedly possessed by the news producers and assignment desk editors. However, in its brief, the Employer essentially relied only on the indicia of assigning and responsibly directing employees in arguing that the news producers possess indicia of supervisory authority.

acting general manager. The schedules for the photographers are created by the News Operations Manager. The employees' timesheets, including the Executive Producer and the Managing Editor, are reviewed by the business manager.

With regard to overtime, Business Manager Teresa Stedman testified that the Station Manager, the Assistant News Director, the Executive Producer and the Managing Editor have the authority to approve overtime. Additionally, Stedman testified that if one of the managers is not present and there is a critical situation, the news producer or the assignment desk editor may authorize overtime. Stedman testified that she could not provide a specific number of times that the news producers and assignment desk editors authorized overtime, but asserted that it was on a weekly basis. However, assignment desk manager Shelly Swanke testified that during a recent news story she asked a reporter and photographer to stay overnight on the coast to report on tsunami watch and the reporter and photographer refused. Swanke testified that she had to find another crew, but did not testify that the reporter or photographer was otherwise disciplined for refusing to stay over. News producer Tia York testified that while she does not approve overtime, she may make a decision that gives an employee overtime such as requesting that a reporter rewrite his or her story for the later news broadcast. Reporter Christine Miles testified that the Executive Producer or Managing Editor authorizes overtime. Significantly, neither the assignment desk editor nor the news producers have the authority to require employees to work overtime. Moreover, the record does not reveal what factors, if any, are considered by the news producers and/or assignment desk editors with regard to whether to request or approve overtime.

There is very little evidence in the record that news producers and assignment desk editors have the authority to hire, terminate, suspend, transfer or evaluate employees or grant wage increases. Each of these employee actions are typically handled by the acting general manager. Although News Operation Manager Brown testified that news producers conduct interviews and make recommendations regarding hiring, Brown did not provide any details or documents in support of these assertions. Terminations and suspensions are done at the corporate level, which is located in Indianapolis, Indiana. News producers and assignment desk editors do not have access to employee personnel files. The only employees who have access to employee personnel files are the general management team including the general manager and the station manager.

While all the employees receive the same benefits and are subject to the same personnel policies, news producers receive an \$80 parking stipend. The parking stipend is a negotiated item for the other union represented employees, except for the anchors who do not pay for parking. Although the Employer did not identify the salary for each particular employee, it did provide salaries for employees within a job description or the ranges of salaries for certain positions. In particular, the salaries for the three assignment desk editors are, respectively, \$40,000, \$50,471 and \$52,156 annually. For the most part, the salary ranges for news producers are between \$45,000 and \$60,664 annually, however, there is one producer who earns \$30,000 annually. The salary range for reporters is \$45,000 to \$63,000 annually and for photographers is \$40,000 to \$63,000 annually.

The job descriptions of both the news producers and assignment desk editors provide under the heading "supervisory responsibilities" that such responsibilities are not applicable to those two positions.²⁶ Additionally, news producers and assignment desk editors do not attend and/or have not attended the weekly management meetings where personnel issues, special stories, ratings, scheduling and other topics related to managing the news broadcast are discussed and dealt with.

²⁶ As noted above, supervisory authorities were listed in the job description for the senior news producer who did not testify at the hearing in this case. No distinct job description was presented by the parties with regard to the assistant desk manager position.

III. ANALYSIS

A. Supervisory Status

The Employer argues that the news producers and assignment desk editors are supervisors within the meaning of Section 2(11) of the Act. Section 2(3) of the Act excludes “any individual employed as a supervisor from the definition of ‘employee.’” Section 2(11) of the Act defines “supervisor” as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive, and the “possession of any one of the authorities listed in [that section] places the employee invested with this authority in the supervisory class.” *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. *NLRB v. Kentucky River Community Care Inc.*, 121 S.Ct. 1861 (2001). The legislative history of Sec. 2(11) indicates that Congress intended to distinguish between employees who may give minor orders and oversee the work of others, but who are not necessarily perceived as part of management, from those supervisors truly vested with genuine management prerogatives. *George C. Foss Co.*, 270 NLRB 232, 234 (1984). For this reason, the Board takes care not to construe supervisory status too broadly because the employee who is deemed a supervisor loses the protection of the Act. *St. Francis Medical Center-West*, 323 NLRB 1046 (1997). Thus, the burden of proving supervisory status is on the party alleging that such status exists. *Kentucky River*. That means that any lack of evidence in the record is construed against the party asserting supervisory status. *Freeman Decorating Co.*, 330 NLRB 1143 (2000). Moreover, whenever evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established. *Phelps Medical Center*, 295 NLRB 486, 490-91 (1989). Additionally, mere opinions or conclusory statements do not demonstrate supervisory status. *St. Alphonsus Hospital*, 261 NLRB 620 (1982), enf. 112 LRRM 3168 (9th Cir. 1983); *Chevron U.S.A.*, 309 NLRB 59 (1991).

B. Parties’ Reliance on Industry Precedent

Both the Employer and Petitioner rely heavily on Board and Circuit Court precedent to support their contentions regarding the supervisory status of the nine news producers and three assignment desk editors. Some Board decisions have found news producers, assignment desk editors, and similar employees, to be statutory supervisors in some factual circumstances, see *Westinghouse Broadcasting Co., Inc.*, 188 NLRB 157 (1971); *Westinghouse Broadcasting Co., Inc.*, 195 NLRB 339 (1972), while other Board decisions have found these employees not to be statutory supervisors. See *Westinghouse Broadcasting Co., Inc.*, 215 NLRB 123 (1974), *King Broadcasting Co. d/b/a KGW-TV*, 329 NLRB 378 (1996).

Both parties focused on the Board’s recent decision in *King Broadcasting Co.*, which similarly involved the newscast industry. There, the Board found news producers and assignment desk editors (who possessed similar responsibilities and duties to the present news producers and assignment desk editors) “were not statutory supervisors where they were part of an integrated production team in which their skills and responsibilities were joined in a collaborative effort with those of other news department employees in order to coordinate and develop a single product.” In so doing, the Board further held that members of the production team were independently capable of

executing their own assignments and, thus, the disputed producers did not responsibly direct others in the performance of their duties. *Id.* at 381. However, the Board also relied, in part, on the news producers and assignments editors' "exercise of substantial and significant judgment ... based on their own training, experience, and expertise." *Id.* at 382 - 383. With regard to this latter reliance by the Board, I note that the Supreme Court in *Kentucky River* subsequently rejected the Board's interpretation of independent judgment to exclude judgment based on training, experience, or expertise. 121 S. Ct. at 1867-68. Thus, while I have considered the Board's decision in *King Broadcasting*, I have also noted and accounted for the Employer's criticism of that decision in light of the Supreme Court's subsequent decision in *Kentucky River*.²⁷

C. News Producers

The Employer asserts the news producers are statutory supervisors because they purposefully assign and responsibly direct reporters, anchors, graphic artists, associate producers, and newscast directors. Specifically, the Employer asserts that the news producers assign and responsibly direct employees during the morning and night editorial meetings; assign and direct the anchors, reporters, photographers and other employees when creating the news broadcasts' rundown; assign and direct associate producers and graphic artists to respectively create scripts and graphics; and assign and direct reporters whose stories fail to pan out, when breaking news occurs, and during the actual news broadcasts.

Before I address these assertions, I note that the record clearly reveals that the Employer maintains a well-defined managerial/supervisory structure and presence within its news department. The primary managers (Station Manager, the Assistant News Director, the Executive Producer, Managing Editor, News Operations Manager, Chief Photographer) are each directly, respectively and primarily responsible for one of the five major employee classifications - reporters/anchors; news producers/associate producers/writers; assignment desk editors; editors; and photographers. During the course of the hearing in this matter, the Employer failed to account for the apparent duplicative interplay or apparent conflicts between this direct supervision by undisputed managers/supervisors and the alleged supervision of the same employees by the news producers and assignment desk editors. In addition to other evidence, the Employer's own documents setting out the organizational hierarchy and the job descriptions for the news producers and assignment desk editors fail to support the Employer's position that the news producers and assignment desk editors' responsibilities/duties include supervision of station employees.²⁸

With respect to the Employer's assertion regarding the news producers' role at the editorial meetings, the record demonstrates that the editorial meetings are clearly a collaborative process for selecting the lead stories and for setting reporters, producers and others' assignments. The record further clearly demonstrates that while the producers are free to make recommendations regarding broadcast content and assignments, reporters, photographers and others are just as equally free to make similar recommendations regarding many of the same matters. Indeed, the record does not support a conclusion that the producers' recommendations carry any more weight than reporters. Rather, the record establishes that this collaborative effort is almost universally the rule rather than the exception when it comes to arriving at lead stories and reporters' assignments. In the

²⁷ In *King Broadcasting*, supra, a majority of the five-member panel found the producers and assignment desk editors did not possess indicia of supervisory status as that term is defined in Section 2(11) of the Act. In that decision, the dissent did not take issue with the majority's decision regarding the producers.

²⁸ In this regard, I note that organizationally, the three associate producers/writers fall beneath the nine "producers" who in turn fall beneath the Executive Producer. Above, I have also noted that the senior producer's job description, which sets forth indicia of supervisory authority, conflicts with more reliable record evidence establishing that the senior producer's duties and responsibilities are substantially identical to those of the other eight producers. Indeed, the senior producer is paid less than other producers, which supports the conclusion that the senior producer's position does not differ in other material respects from the other eight producers.

exceptional case of a conflict, the record reveals that the Managing Editor and/or Executive Producer ultimately resolve any conflicts after listening to the various sides in the conflicts.²⁹ While a successful recommendation by a producer certainly will impact others in their work, similarly, a successful recommendation by a reporter or a photographer will certainly and conversely impact the producer's work.³⁰ Indeed, it is quite common for reporters to select their assignments during these meetings. Under these circumstances, I find that the Employer failed to meet its burden of establishing that the role of the news producers in the editorial meeting supports a finding of supervisory status, especially as it relates to the assignment and responsible direction of work. Rather, these daily meetings appear to set the course of everyone's work throughout most of the workday and are substantially similar to the types of meetings conducted in *King Broadcasting*. (Id. 329 at 378).

With respect to the producers' creation of a rundown, the record reveals that the rundown is, to a significant degree, controlled by the decisions reached at the editorial meeting. Although the news producers have some discretion when creating the rundown, news producers also testified that they use a template when creating their rundown, which uses a standardized or routine format for the news show, including established start times for certain news segments and for commercial breaks. Additionally, the length of the story will typically depend on standard time allotments for different types of stories (e.g., one minute twenty seconds for a reporter's package story and certain time allotments for sports and weather). As mentioned above, the lead story and the reporters' stories are chosen during the editorial meeting. Further, the weather and sports anchors will decide how to actually present the news in his or her segment. In the end, the news producer is responsible for plugging in the fifteen to twenty stories, which they usually pull from prior stories covered that day, the local and national associated press wire, the internet, newspapers, radio, CNN, CBS and from satellite feed. In this regard, the news producer is responsible for choosing the format for presenting these stories, writing the script for these stories, and choosing whether to include a graphic with the stories. During this process, the news producers may shorten or lengthen a reporter's story. However, the record reveals that the news producer's creation of the rundown is often in collaboration with the reporters and that the reporter may involve the Executive Producer if there is a conflict with respect to the reporter's story. Moreover, the news producer's rundown is ultimately reviewed by the Executive Producer prior to the broadcast. Although the Executive Producer does not typically change the rundown, he apparently has done so on occasion. While the Employer contends that the producer's rundown (setting newscast content, format and scheduling) is exclusively or significantly within the sole province of the producer, the reality is that the rundown is akin to an architect's blueprint that is subsequently subject to changes, deletions and/or additions by others, including reporters and anchors who actually build and/or report the stories.³¹ In light of the above and the record as a whole, I do not find that the news producers possess indicia of supervisory authority at it relates to the creation and use of the rundown by the Employer in its news operations. More specifically, I do not find that news producers assign or responsibly direct employees through the creation of the rundown.

²⁹ Unlike the circumstances here, the authority to effectively recommend generally means that the recommended action is taken without independent investigation by superiors, and not simply that the recommendation is ultimately followed. See *Children's Farm Home*, 324 NLRB 61, 61 (1997).

³⁰ For instance, if a reporter successfully pitches a story for broadcast, the producer will necessarily be required to incorporate that into his/her rundown and for actual presentation during the airing of the newscast.

³¹ See *McGraw-Hill Broadcasting Company, d/b/a KGTV*, 329 NLRB 454, 457 (1999) wherein the Board addressed the essence of producers creation of a rundown and the nature of changes or adjustments to that rundown during the actual broadcast: "Further, while the Regional Director found that the producer/directors have the responsibility for the rundown for each broadcast and are not required to adhere rigidly to the format established by others, the daily newscasts, in fact, are presented in a formatted structure. Any deviations made by the director calling the show deal with unexpected technical glitches, camera angles, or the opening or closing of a particular microphone. Thus, we conclude that the Regional Director also erred in finding that Piper and Taix are statutory supervisors. See, e.g., *Mississippi Power & Light Co.*, 328 NLRB No. 146 (1999)."

As for the Employer's assertion regarding script assignments, the news producers testified that they attempt to write the stories themselves and when they cannot, they assign the scripts to other "writers." However, the record reveals that the other "writers" turn out to be other producers and associate producers. Moreover, because of scheduling, it does not appear that a producer may have any more than one associate producer with whom to work at any given time.³² Regardless, the record does not detail under what circumstances the need arises for a news producer to find someone to write a script. It is also unclear whether other news producers are free to reject the assignment due to their own respective workloads and who, if anyone gets involved in such a dispute. For instance, what involvement, if any, does the Executive Producer have with regard to making these script assignments? Moreover, the nature and extent of the relationship between the associate producers, news producers and/or the Executive Producer was not detailed in the record. For instance, is the associate producer and the news producer's working relationship akin to an apprentice - journeyman relationship in the construction industry? In short, the Employer did not provide concrete evidence about how decisions are made regarding the news producers' alleged assignment and responsible direction of script work and what factors are considered when making these alleged assignments.³³ Consequently, on this record, it appears that the news producers' alleged script assignments/directions are a matter of routine rather than a reflection of independent judgment.³⁴ I also note that if the news producers are found to be supervisors, the ratio of news producers to associate producers would be nine supervisors (ten, including the Executive Producer) to two employees. Moreover, news producer Tia York presented undisputed testimony that the rewriting assignments given to reporters were merely requests. York did not provide any additional evidence regarding how often she requests reporters to rewrite their stories or what would happen if those requests were not followed. In view of the above and the record as a whole, the Employer failed to meet its burden of establishing that the news producers possess authority to assign and responsibly direct employees with regard to script writing and/or that they exercise independent judgment in exercising such authority.

The Employer also asserts that the news producers are supervisors because they assign graphic artists to create graphics. The record reveals that during the creation of the rundown, the news producers create a graphics list, which specifies what graphics they want during the news broadcast. The news producer then gives this graphics list to the graphics department. The graphic department artists have separate supervision, work in a separate department and work on a separate floor from the producers in the station. Moreover, there is insufficient evidence in the record that the news producers engage in significant, direct communication with the individual graphic artist. If a news producer is not satisfied with a graphic, there is no evidence that the news producer directly requests that the individual graphic artist redo the graphic. Rather, the evidence suggests that the news producer would resend the graphic to the graphics department with the requested changes. While it appears that a producer's request for a graphic has an impact on the nature and extent of work performed by graphic artists, certainly, the same could be said of an anchor or reporters who similarly request certain graphics to go with their respective stories. Regardless, the producers' request for and approval of graphic work does not warrant a conclusion, on this record, that the news producers actually assign and responsibly direct the graphic artists.

³² Aside from the issue of the associate producers' availability or scheduling, the record is not clear regarding the actual scheduling or availability of other news producers to perform script work. Nevertheless, the Board has held that assignments based on employees' skills when the differences in skills are well known, have been found routine as have assignments made to equalize employees' work on a rotational or other rational basis. See *Clark Machine Corp.*, 308 NLRB 555, 555-556 (1992) and *Ohio Masonic Home*, 295 NLRB 390, 395 (1989).

³³ It is also worthy of note, that despite what the producer creates in the way of a script, anchors and reporters are free to change/rewrite the script to suit their respective style of reporting the news.

³⁴ Proof of independent judgment in the assignment or direction of employees entails the submission of concrete evidence showing how such decisions are made. *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1336 (2000); *Crittenton Hospital*, 328 NLRB 879 (1999); *Franklin Home Health Agency*, 337 NLRB 826 (2002).

As for the Employer's assertion about the news producer's alleged assignments and direction when stories fail to pan out, News Operations Manager Brown, in his testimony, did not testify regarding any incidents or concrete examples of a story failing to pan out. However, reporter Miles and news producer Foster testified that reporters will get instructions from the Executive Producer or Managing Editor, rather than from the news producer, about how to handle a story that is failing to pan out or about picking up a new assignment. Further, the record reveals that the Executive Producer and/or the Managing Editor will decide how to handle the loss of a news story that had been planned for a broadcast but failed to pan out. I also note that the record reveals that a producer and the Executive Producer on one occasion, suggested to a reporter how to handle a story that was failing to pan out, the reporter failed or refused to follow-through on the suggestion and there was no evidence that reporter suffered any adverse impact from this failure/refusal. Under these circumstances, the Employer has failed to meet its burden of establishing that the news producers possess supervisory authority concerning stories that fail to pan out.³⁵

With regard to the Employer's assertions concerning the producer's alleged assignments and direction when breaking news occurs, the record reveals that after the news producer's rundown is approved by the Executive Producer and the show proceeds to its actual airing, the news producer gives the rundown to the newscast director who is responsible for implementing the rundown during the news broadcast. During the news broadcast, the evidence reveals that the newscast director, rather than the news producer, is primarily responsible for directing the cameras, audio and newscast production.³⁶ At this point, the reporters have completed their assigned stories, the scripts have been given to the anchors to read on the air, and the news producer proceeds to the control room where she or he will actively observe, and to some degree, monitor the broadcast with the director and others. During the broadcast, the news producer is connected to the anchors and the newscast director by an ear piece or IFB and may intervene during the broadcast to handle breaking news. However, the record also reveals that the Executive Producer, rather than the news producer, is actually monitoring breaking news during the broadcast and relays instructions to the news producer, who in turn, relays instructions to the anchors and/or director as to how to deal with the breaking news.

Further testimony from news producer Tia York reveals that if something goes wrong during the news broadcast, she will make a decision regarding what to do and give direction over the ear piece or interrupted feedback (IFB) to the director and the anchors. Concrete evidence regarding the nature and extent of such directions and the factors York takes into account in issuing these directions is lacking in the record. Moreover, anchorman Mark Rochetti testified that during the morning show, the producer gives the anchors instructions over their ear piece or IFB regarding whether they should wrap it up, when they should return to their seat, and/or any changes to the story length. However, absent more, the directions would appear to be routine directions geared towards keeping the newscast on track and would also appear to be duplicative of some of the work performed by the director of the broadcasts.

With regard to the news producers on the weekend, the evidence demonstrates that they do not operate independent of management oversight. Indeed, an on-call manager is responsible for

³⁵ News producer Tia York, who produces the 11:00 PM news broadcast, testified that she has the authority to reassign reporters whose stories have failed to pan out after the Executive Producer and Managing Editor have left for the day. York did not testify about any specific instances where she has reassigned a reporter or about the factors she considers when making such reassignments. Additionally, the Managing Editor does not leave until 7:00 PM and, but for the Stations Manager and Assistant News Director's recent departures, the Executive Producer is normally present at the station until 10:00 PM. Further, night and weekend crews consist of a skeletal crew of two to three reporters and the same number of photographers at any given time. Consequently, reporter/photographer availability is overwhelmingly the primary factor of consideration in these assignments, thereby removing independent judgment from such decisions during the night and weekend shifts.

³⁶ The newscast directors are included in the other existing bargaining unit represented by Petitioner.

calling the producer every two to three hours between 9:00 AM and 7:00 PM for the purpose of discussing the stories and the show programming. Additionally, the Managing Editor and Executive Producer are available by cell phone at all times and the record reveals that the weekend newscasts are subject to greater pre-planning than the weekday newscasts.

In light of the above and the record as a whole, I find that the producers do not possess supervisory authority as it relates to reporters' stories failing to pan out, when breaking news occurs, and during the actual news broadcasts.

Regarding the Employer's assertion that news producers direct employees, the Employer has failed to show that the news producers' direction of employees is "responsible direction," which depends on "whether the alleged supervisor is held fully accountable and responsible for the performance and work product of the employees he directs." See *Franklin Hospital Medical Cent.*, 337 NLRB 826, 831 (2002), citing *Schnurmacher Nursing Home*, 214 NLRB F.3d 260, 267 (2nd Cir. 2000). In the present case, while several witnesses testified that the news producers are responsible for the news broadcast, the same witnesses did not specify what the producers are held accountable/responsible for and how they are held accountable/responsible. In this regard, the Employer did not provide testimony from the news producers' direct supervisor, who is the Executive Producer, or from any other managers/supervisors. The Employer also did not provide any documentary evidence, such as evaluations or disciplinary notices, demonstrating that the news producers have been held accountable/responsible for the performance and work product of others. Indeed, the post mortem meetings is the closest the Employer came in this regard but even there it does not appear that there is any significant form of accountability or responsibility by the producer for the work or performance of other employees or for the negative aspects of the broadcasts. In short, the Employer has failed to meet its burden of establishing that the producers possess the authority to responsibly direct employees.

Additional evidence regarding secondary indicia of supervisory authority in the record supports my conclusion that the news producers are not supervisors.³⁷ There is no evidence that the news producers generally earn more money than the reporters or photographers. Indeed one news producers earns \$30,000, which is at least \$10,000 less than all the salary range for the reporters and photographers. Also the news producers, as a whole, earn less than the anchors. The news producers do not attend the Employer's weekly management meeting, do not create schedules, and may not authorize overtime without prior approval and may not require employees to work overtime.³⁸

The Employer cites *Multimedia KSDK, Inc. v. NLRB*, 303 F.3d 896 (8th Cir.2002) in support of its assertions in this case. That case involved the appeal of earlier proceedings before the Board and involved producers and assignment editors performing work in a television news station, similar to that in the instant case. In the earlier proceedings, the Board had found the producers and assignment editors were not supervisors within the meaning of the Act. However, in the 8th Circuit decision cited by the Employer, only the supervisory status of the producers was at issue. There, the 8th Circuit reversed the Board's "conclusory affirmance of the Regional Director's decision" concerning the producers because the Board's decision "rests upon a categorical exclusion similar to that rejected in *Kentucky River*. Section 2(11) of the Act does not exclude judgment based on an

³⁷ Secondary indicia of supervisory authority has no probative weight in the absence of evidence that these individuals possessed any of the enumerated categories of authority in Section 2(11) of the Act. *Hausner Hard-Chrome of Ky, Inc.*, 326 NLRB 426, 427 (1998); *J. C. Brock Corp.*, 314 NLRB 157, 159 (1994); *Palagonia Bakery Co., Inc.*, 339 NLRB 515 (2003).

³⁸ See *Harborside Healthcare, Inc.*, 330 NLRB 1334, at 1336 (2000). (Call-in authority was not supervisory in the absence of evidence disclosing how alleged supervisors decided which employees to call. Moreover, reliance on volunteers and a lack of authority to compel overtime work underlined the absence of supervisory power. See also *Hilliard Development Corp.*, 187 F.3d 133, 146 (1st Cir. 1999)); *Illinois Veterans Home at Anna L. P.*, 323 NLRB 890, 891 (1997).

employee's 'experience, skills, training, or position' from the definition of independent judgment." As noted above, I have not rested this decision on the rejected categorical exclusion at issue in the 8th Circuit Court and *Kentucky River* cases. Rather, as I have noted above, my decision in this case rests on my finding that the news producers and assignment desk editors are not statutory supervisors because they are part of an integrated production team in which their skills and responsibilities are joined in a collaborative effort with those of other news department and station employees in order to coordinate and develop a single product. This finding is revealed in the collaborative manner in which the editorial meetings are conducted, the manner in which the producers create their respective rundowns based in significant part on these meetings, the integrated and collaborative manner in which other employees contribute to and independently work off the rundown, and ultimately in the manner in which different classifications of the Employer's employees come together in a collaborative and integrated fashion to actually conduct the airing of the news broadcast. Additionally and alternatively, I have also set forth above, other independent grounds for finding that the producers and assignment desk editors are not supervisors. In light of the above and the record as a whole, I find that the Employer's reliance on the 8th Circuit's decision is misplaced.

The Employer also cited three other cases to support its assertions in this proceeding. The first is *Westinghouse Broadcasting Company, Inc.*, 188 NLRB 157 (1971) which involved the supervisory status of seven news producers at a news station in San Francisco. There, the Board found the producers to be supervisors based on record evidence not present here. In particular, the *Westinghouse* producers were found to be "completely responsible for the content of the news program" in a news station that apparently did not conduct daily, collaborative editorial meetings and did not conduct its operations in an integrated fashion as is the case in this proceeding. Also, the *Westinghouse* producers alone reviewed film from stringers, decided whether to purchase that film, could call and require news processors to come into work and process the stringer's film, and, at certain times, assigned and reassigned photographers and reporters to cover stories and in that regard, could assign overtime work and call in employees to work outside their scheduled shifts. Additionally, in *Westinghouse*, there were secondary indicia of supervisory status including, among other things, payroll treatment similar to other managers/supervisors, availability of benefits to producers that were only available to managers/supervisors and unavailable to employees, and evidence establishing that producers were considered by employees to part of management/supervision. Thus, the record in *Westinghouse* is clearly distinguishable from the case before me.

The second case is *Westinghouse Broadcasting Co., Inc.*, 195 NLRB 339 (1972), which also involved only producers and involved facts and Board findings substantially similar to *Westinghouse's* 1971 case discussed above. This 1972 Board decision was similarly lacking facts, present in this case, regarding collaborative editorial meetings and an integrated news production team. In the second *Westinghouse* case, the producers also attended monthly management meetings similar to the weekly management meetings that occurred in the instant case prior to the recent departure of the Station Manager and the Assistant News Director. Here, however, the producers and assignment desk editors do not attend management's weekly meetings. As with the 1971 case, this 1972 Board decision is distinguishable from the case before me.

The third case is *Hearst Broadcasting Corporation d/b/a WDTN-TV*, 267 NLRB 326 (1983). *Hearst* involved three producers working at a television station in Dayton, Ohio. There, again, the producers were vested with more authority than present in this matter. In particular, the WDTN-TV producers were not required to have their rundowns "cleared" and those rundowns were not subject to collaborative style editorial meetings. The Board further found that the producers "dictate the length of the story and the tape or film to be used to visualize the story" and WDTN-TV employees have been told to "respect" the news producer's decision as final." In the case at hand, rundowns are approved by or cleared with the Executive Producer, reporters have successfully recommended news content/stories, have executed their own assignments and have bypassed producers when the reporters' stories fail to pan out and they seek additional work and when reporters have conflicts with

producers over the reporters' reporting of a story. In sum, the WDTN-TV producers had dictatorial authority not present in the case before me. Moreover, the WDTN-TV producers effectively recommended discipline and granted overtime without consulting others -- authority also not present in the instant case. Accordingly, I find *Hearst* inapposite to the case before me.

In sum, the record reveals the evidence offered by the Employer was primarily presented in the form of conclusory testimony by various Employer witnesses about the producers' control over the production of the news broadcasts, their responsibility for the content and format of the broadcasts, and their responsibility to incorporate others' work into the broadcast. Moreover, the record, as described, reveals abundant specific evidence contradicting the Employer's conclusory testimony. In this regard, the Board has held that conclusory statements, without supporting evidence, are insufficient to establish supervisory status and authority. See *Armstrong Machine Co.*, 343 NLRB No. 122, slip op. at 1, fn. 4 (2004), citing *Chevron Shipping Co.*, 317 NLRB 379, 381 fn. 6 (1995), which in turn cited *Sears, Roebuck & Co.*, 304 NLRB 193, 199 (1991). The Board has further held that whenever evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established. *Phelps Medical Center*, at 490-91. Based on the above, the record evidence and analysis, I find that the Employer has failed to meet its burden of establishing that the news producers possess indicia of supervisory authority as that term is defined in Section 2(11) of the Act.

D. Assignment Desk Editors

The Employer asserts that the assignment desk editors assign photographers to the reporters after the morning and night editorial meetings based on the photographers' skills; assign and responsibly directs crews of reporters and photographers while they are out in the field with regard to story creation and equipment; and assign the helicopter, stringers (freelance photographers), and the satellite trucks for use in news coverage.³⁹

With respect to the Employer's assertion that the assignment desk editors are responsible for assigning photographers to reporters, several witnesses testified that the assignment of photographers is routine, generally consisting of dispatching the first photographer who comes through the door. This is particularly so during the night and weekend shifts when there are only two or three photographers available. Assignment desk manager Shelly Swanke testified that is the case for approximately 60% of the photographer assignments. As for the remaining 40% of photographer assignments (which for the night and weekend shifts and on a percentage basis only, leaves one remaining photographer to assign), they are based on reporters' requests, on a common understanding of who works well together and some are based on the assignment desks editor's undefined "discretion." With regard to such discretion, a number of witnesses testified further that the assignment desk editors are similar to dispatchers and that reporters have as much control over the selection/assignment process as the assignment editors. The Board and federal courts "typically consider assignment based on assessment of a worker's skills to require independent judgment and,

³⁹ The Employer also asserts that the assignment desk editors participate in hiring, training, evaluating and disciplining personnel. The record clearly establishes that the assignment desk editors do not hire, discipline or evaluate personnel. Assignment desk manager Shelly Swanke testified that she sat on a hiring committee of four individuals several years ago but she did not have the authority to hire employees and her recommendations were not always followed. There is no evidence that Swanke's past hiring committee involvement is currently part of her normal responsibilities. Indeed, Business Manager Teresa Stedman testified that the hiring decisions were actually made by the acting general manager. The Board has held that effective recommendation generally means that recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed. *Children's Farm Home*, 324 NLRB 61 (1997); but see *Entergy Systems and Service, Inc.*, 328 NLRB 902 (1999), regarding blocking of promotions unless a consensus is reached by all on the evaluation committee. Swanke also testified that she trains other assignment desk editors. However, training, alone, does not demonstrate supervisory status. See *Chrome Deposit Corp.*, 323 NLRB 961 (1997).

therefore, to be supervisory," except where the "matching of skills to requirements [is] essentially routine." *Brusco Tug & Barge Co.*, 247 F.3d 273, at 278 (D.C. Cir. 2001), citing *Hilliard Development Corp.*, 187 F. 3d 133, 146 (1st Cir. 1999). Such routine or perfunctory assignment does not demonstrate supervisory status. See *Delta Mills, Inc.*, 287 NLRB 367, 370-71. Under the circumstances of this case, I find that the assignment desk editors do not possess the authority to assign photographers.⁴⁰ See *King Broadcasting*, supra.

The Employer also asserts that the assignment desk editors have the authority to direct reporters and photographers in the field. However, the evidence fails to demonstrate that the assignment desk editors possess any more authority in this regard than the news producers. Indeed, the reporters and/or photographers know, as a result of the editorial meetings, what stories they are to cover at the beginning of their workday. Also, reporters only contact the station if their stories are falling through and when they do contact the station, the Executive Producer and/or the Managing Editor, rather than the assignment desk editors, come up with alternative stories to cover or suggestions on how to prevent a story from failing to pan out.

With regard to the coverage of breaking news, the record reveals that the assignment desk editor will contact a crew and reassign them to the story. However, there is no specific evidence of this occurring or whether the assignment desk editor would exercise independent judgment in making such an assignment. As noted above in the analysis concerning producers, proof of independent judgment in the assignment of employees entails the submission of concrete evidence showing how the assignments are made. The Board has held that the assignment of tasks in accordance with an employer's set practice, pattern, or parameters, or based on such obvious factors as well-known skills or based on whether an employee's workload is light, does not require a sufficient exercise of independent judgment to satisfy the statutory definition. See *Franklin Home Health Agency*, supra and *King Broadcasting*, supra. Here, the Employer failed to provide concrete evidence on how assignments are made. Consequently, I cannot conclude on this record that the Employer has met its burden of establishing that the assignment desk editors assign and responsibly direct reporters and photographers with regard to their covering of stories or breaking news. Moreover, such alleged authority would appear to be duplicative of the role performed by the Executive Producer and Managing Editor as noted above with regard to the Employer's similar assertion relating to the producers.

Finally, the Employer asserts that the assignment desk editors have the authority to unilaterally assign the helicopter, stringers or other equipment. The record demonstrates that the assignment desk editors have the authority to dispatch equipment, including satellite trucks and microwave trucks to crews, helicopters and stringers. With respect to the dispatch of trucks, the only record evidence of factors considered by the assignment desk editors is availability of the trucks and of someone (who was/were not identified in the record) to operate the truck. Other than that, the record is lacking in concrete evidence surrounding the factors considered in dispatching or assigning trucks. Regarding helicopter and stringers, the evidence suggests that the assignment desk editors normally seek prior approval before using either. In particular, there is no evidence in the record of an assignment desk editor using the helicopter without at least obtaining the tacit approval of a manager who was present when the call came in requesting the helicopter. Further, documentary evidence in the record discloses that the Employer has a policy that employees must request prior approval before using stringers, with whom the assignment desk editors have no authority to negotiate the stringers' fees or charges. Based on the foregoing, I find that the record evidence is insufficient to demonstrate that the assignment desk editors possess supervisory indicia as it relates to the dispatch or assignment of trucks, helicopters and stringers.

⁴⁰ In this regard, the record reveals little about the supervision of the assignment desk editors by the Managing Editor, the role of the Managing Editor in assigning photographers, and the presence or availability of the Managing Editor who directly supervises the three assignment desk editors.

The Employer asserts that the assignment desk editors responsibly direct other employees. However, as with the producers, the Employer has failed to establish that the assignment desk editors are held accountable or responsible for the work or performance of others. In line with my analysis above on this point, I find that the assignment desk editors do not responsibly direct employees.

The Employer cites *The Taft Broadcasting Company*, 226 NLRB 540 (1976) in support of its assertions regarding the assignment desk editors in this case. In *Taft*, the Board addressed a number of issues and, in particular, the supervisory status of one assignment editor. There, the Board found that the assignment editor, based largely on employer practice, assigned reporters and photographers to news stories. However, when discussions arose about modifying the assignments, “final” authority rested with the assignment editor. Here, the evidence does not support that the assignment desk editors have such “final” authority with regard to any assignments. The assignment editor in *Taft*, who is responsible for “moving people around to get maximum coverage,” also determined which stories will be covered, how extensively, and by whom. Further, the assignment editor possessed the authority to recommend discipline, evaluated employees, and could require employees to work overtime or could call in additional employees. Here, the record contained conflicting testimony regarding the nature and extent of the assignment desk editors alleged authority to assign and direct reporters in the field. The instant record also revealed a lack of concrete evidence detailing the nature and extent of assignments and direction by the assignment desk editors of reporters and photographers and revealed conflicting evidence regarding who is actually responsible for the direct supervision and scheduling of reporters and photographers. Moreover, here, the assignment desk editors do not possess the authority to grant overtime, to require overtime, to discipline and/or to evaluate employees. In short, the Employer’s reliance on *Taft* is misplaced.

The Employer also cited the Regional Director’s decision in 5-RC-15250 (November 6, 2001). However, that decision carries no precedential value with respect to this proceeding before me in this Region. Accordingly, I have not responded herein to the Employer’s assertions regarding the applicability of the decision in 5-RC-15250.

In light of the above and the record as a whole, I find that the Employer has failed to meet its burden of establishing that the assignment desk editors possess indicia of supervisory authority as that term is defined in Section 2(11) of the Act.

IV. CONCLUSION

In view of the record evidence and the above, I shall include news producers and assignment desk editors in the residual Unit sought by Petitioner. Accordingly, I shall direct an election in the following appropriate residual Unit:

All fulltime and regular part-time commercial production employees, senior news producer, news producers, assignment desk editors, assignment desk manager, assistant chief photographer, and webmaster employed by the Employer at its Portland, Oregon place of business; excluding all other employees, the systems analyst, office clerical employees, professional employees, guards and supervisors at defined by the Act.

There are approximately 22 employees in the residual Unit found appropriate.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board’s Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained

their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS, THE BROADCASTING & CABLE TELEVISION WORKERS SECTOR OF THE COMMUNICATIONS WORKERS OF AMERICA LOCAL 51, AFL-CIO.⁴¹

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Officer in Charge for Subregion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Subregion shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in Subregion 36, 601 SW Second Avenue, Suite 910, Portland, Oregon, 97204-3170, **on or before August 3, 2005**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of four copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

⁴¹ This is an election in which Petitioner, a representative of employees in a partially organized facility, seeks to add a group of unrepresented employees to an existing unit, commonly referred to as an *Armour-Globe* election. *Armour & Co.*, 40 NLRB 1332 (1942); *Globe Machine Stamping Co.*, 3 NLRB 294 (1937). If a majority of valid ballots are cast for Petitioner, residual Unit employees will be taken to have indicated their desire to be included in the existing unit currently represented by Petitioner. In such event, the following bargaining unit shall become appropriate for purposes of collective bargaining:

All full-time and regular part-time engineering, audio, camera, chyron, technical directors, lighting, master control, photographers, editors, graphic artists, directors, floor directors, commercial production employees, senior news producer, news producers, assignment desk editors, assignment desk manager, assistant chief photographer, and webmaster employed by the Employer; excluding all other employees, systems analyst, chief photographer, office clericals, professionals, guards and supervisors as defined in the Act.

If a majority of valid ballots are not cast for representation, residual Unit employees will be taken to have indicated their desire to remain unrepresented and Petitioner's existing unit remains unchanged.

B. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by **5 p.m., EST on August 10, 2005**. The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

DATED at Seattle, Washington this 27th day of July 2005.

/s/ [Richard L. Ahearn]
Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, WA 98174